Neutral Citation Number: [2020] EWCA Civ 1587

Case No: B5/2020/0028

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE MAYOR'S AND CITY OF LONDON COURT
HHJ FREELAND QC
Case No. F40CL213

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/11/2020

Before :

LORD JUSTICE BEAN
LADY JUSTICE KING
and
LORD JUSTICE LEWIS

- - - - - - - - - - - - - - - - - - - -

Between :

KALTUN BULLALE	**Appellant**
- and -	
CITY OF WESTMINSTER COUNCIL	**Respondent**

- -
- -

Ms Liz Davies and Mr Nick Bano (instructed by **Gillian Radford & Co Solicitors**) for the **Appellant**
Mr Ian Peacock and Ms Anneli Robins (instructed by **City of Westminster Legal Services**) for the **Respondent**

Hearing date : 12 November 2020

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APPROVED JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Wednesday, 25 November 2020.

Lord Justice Lewis:

INTRODUCTION

1. This is an appeal against a decision of HHJ Freeland QC sitting in the County Court at the Mayor's and City of London Court on 12 December 2019 whereby he dismissed an appeal against a decision of a review officer of the respondent, the City of Westminster, dated 23 August 2019. The review officer upheld a decision of 18 June 2019 that the appellant was intentionally homeless within the meaning of section 191 of the Housing Act 1996 ("the 1996 Act").

2. In brief, the appellant was provided by a local authority with temporary accommodation at Seagrove Hostel in November 2015 pursuant to the duties imposed by the 1996 Act. The appellant was offered suitable accommodation but refused it. The appellant was required to vacate Seagrove Hostel in January 2016.

3. The appellant and her three daughters occupied a one-room studio flat at Bravington Road, London from 19 September 2016 until November 2018 at which date the landlord recovered possession. The appellant applied to the respondent for assistance under Part VII of the 1996 Act as she was homeless.

4. The respondent decided that the appellant had become intentionally homeless when she left Seagrove Hostel in January 2016. It also decided that the period of accommodation at Bravington Road was not settled accommodation capable of breaking the causal connection between the earlier intentional homelessness in 2016 and the homelessness that arose in November 2018. A review officer confirmed that decision. The sole issue is whether the respondent's review officer erred in law in reaching that decision.

THE FACTS

5. The appellant's household consists of herself and her three daughters now aged 26, 21 and 17. The family had lived in private rented accommodation in Fulham. They became homeless in November 2015 when the landlord recovered possession of the property in order to sell it.

6. The local authority, the London Borough of Hammersmith and Fulham ("Hammersmith and Fulham") provided the appellant and her family with temporary accommodation at Seagrove Hostel pursuant to its duties under the 1996 Act. It offered her suitable accommodation in Barking in east London but the appellant declined to accept that accommodation. The authority's duty to secure accommodation for the appellant therefore came to an end by reason of section 193(5) of the 1996 Act. In January 2016, the appellant was required to leave Seagrove Hostel.

7. The appellant spent a few months living with friends. On 19 September 2016, she was granted an assured shorthold tenancy by a private landlord of Flat 7 Bravington Road in London (which was in the area of Westminster City Council). The term was for 1 year at a rent of £302.33 a week. The property comprised a single room, with a kitchen area, and containing bunk beds and a mattress. There was a toilet and shower room shared with other residents (there being 10 such flats at the property). The

appellant lived there initially with her two younger daughters and was joined by her eldest daughter. Hammersmith and Fulham provided financial assistance to pay the deposit. The rent was paid from housing benefit and discretionary payments made by the local authority.

8. On 30 September 2016, the appellant went to the respondent's housing department and asked for assistance because she was living in a bedsit. She explained that she had been living in Seagrove Hostel but had been evicted when she refused alternative accommodation in Barking. She was advised that it was not in her best interests to make an application for assistance under the homelessness legislation because she had refused an offer of suitable accommodation previously. She was also advised that she would not be eligible to register for housing via the housing register as she had not been resident in the respondent's area for three years.

9. On 13 October 2016, the appellant signed a tenancy agreement for Flat 9, Bravington Road. That agreement was to last until 18 September 2017 with a rent of £302.33 a week. It was again a single room, with a kitchen area, but was larger than Flat 7. There was a toilet and shower room used only by the appellant and her family. The rent was paid, as before, from housing benefit and discretionary payments. The decision letter refers to Flat 7 but, in fact, from 13 October 2016 the appellant and her three daughters occupied Flat 9.

10. The appellant contends that the landlord knew at the outset that the flat would be occupied by her and her three daughters. The review officer in her decision accepted that. There is a letter dated 13 February 2017 from the director of the landlord stating that the property had been let on the understanding that the appellant and one daughter only would live there. The letter stated that the appellant and her three daughters now lived there and the property had become severely overcrowded. The letter said either two daughters would have to leave or the premises would have to be vacated. We were told a notice seeking possession was served in June 2017. In any event, the landlord did not seek to recover the property at that stage. The appellant and her three daughters continued to live there. The tenancy continued as a periodic tenancy after the end of the agreed term.

11. In February 2018, the landlord served notice seeking possession. In May 2018, he issued proceedings in the county court seeking possession. In November 2018, a possession order was granted and the appellant and her daughters had to leave Flat 9. They had been in Flat 9 for two years and one month and had spent a further month in Flat 7 before that.

12. The appellant applied for assistance to the respondent under Part VII of the 1996 Act. By letter dated 18 June 2019, the respondent decided that the appellant had become intentionally homeless in 2016. That occurred when the appellant ceased to be able to occupy the accommodation at Seagrove Hostel because she refused to accept an offer of suitable accommodation. The respondent decided that the accommodation at Flat 7 (in fact Flat 9) Bravington Road was not settled accommodation as it was overcrowded and could not be seen as suitable.

13. The appellant requested a review of that decision under section 202 of the 1996 Act. Representations were made on her behalf by solicitors. The review officer confirmed

the original decision. That is the decision under challenge. The material parts provide as follows:

> "8. On the 18th June 2019, Ms Bullale application was rejected on the grounds that she was intentionally homeless, following her eviction from 33 Seagrove Lodge, Seagrove Road, London SE1 1RP. Ms Bullale requested a review of this decision and you have made submissions in support of the review.
>
> "9. Within your submissions you have argued that Ms Bullale last settled address was Flat 7, 180 Bravington Road, London W9. You state that Ms Bullale was assisted by Hammersmith and Fulham Council in paying for the deposit for the above property. You state Hammersmith and Fulham council were aware of the size of the property, and the landlord knew the household composition. You state that Ms Bullale initially moved into the property with her youngest daughter, and the older two daughters joined her in the property.
>
> "10. You argue that Flat 7, 180 Bravington Road, London W9 was Ms Bullale last settled address as it was reasonable for her to occupy with her family.
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> "11. I can confirm that I have also had regard to the case of *Haile v Waltham Forest [2015] UKSC 34* where the Supreme Court held that the decision as to whether an applicant is intentionally homeless depends on the cause of the homelessness existing at the date of the review decision. The court also held that a later event constituting an involuntary cause of homelessness can be regarded as superseding the applicant's earlier deliberate conduct, where in view of the later event it cannot reasonably be said that, but for the applicant's deliberate conduct, he or she would not have become homeless.
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> "12. I have considered your submissions, and I am not satisfied that the accommodation at Flat 7, 180 Bravington Road, London W9 constitutes settled accommodation. As stated above, the accommodation was a studio flat, that was occupied for 4 people, 2 of whom were adults. The accommodation was statutorily overcrowded, from the onset of the tenancy, I am satisfied that the level of overcrowding rendered the accommodation unreasonable.
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> "13. I acknowledge that both Hammersmith and Fulham Council and the landlord were aware of the family size when they moved into the property However, I am not satisfied that this fact renders the accommodation suitable. As stated above the accommodation was severely overcrowded from the onset. I am therefore satisfied that it was unreasonable for Ms Bullale to occupy.
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> "14. Although I acknowledge that Ms Bullale resided in the property for 2 years, I do not accept that the length of time she spent in the property makes the accommodation any more settled. Firstly, I cannot consider the length of time Ms Bullale spent in the property in isolation and have to consider all the facts of her case together. I am also aware that it is possible to occupy insecure, unreasonable or temporary accommodation for an extended period.
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> "15. Having considered the information before me, I am satisfied that Ms Bullale last settled address was 33 Seagrove Lodge, Seagrove Road, London SE1 1RP. This accommodation was provided by Hammersmith and Fhulam Council in pursuance of their duties under s.193 Housing Act (1996). Ms Bullale was evicted from this accommodation after she refused an offer of accommodation at 22 Faircross Mansions, Longbridge Road, IG11. Ms Bullale was advised that if she refused this accommodation, Hammersmith and Fulham would discharge the housing duty to her. Despite this, she refused a suitable offer of accommodation.

> "16. As stated above I a[m] not satisfied that Ms Bullale has any other settled accommodation since her eviction. Furthermore there is nothing to suggest that any subsequent events have occurred which have superseded Ms Bullale deliberate act. Because of this I am satisfied that the cause of her homelessness was her decision to refuse an offer of suitable accommodation".

14 The appellant appealed against decision pursuant to section 204 of the 1996 Act. HHJ Freeland QC, sitting in the Mayor's and City of London County Court, dismissed the appeal and confirmed the decision of 23 August 2019.

THE LEGAL FRAMEWORK

The Legislative Provisions

15 Part VII of the 1996 Act deals with the differing duties owed to those who are homeless or threatened with homelessness. There is an initial duty owed to all eligible persons who are homeless to take reasonable steps to help such persons secure that accommodation becomes available for them for a specified period: see section 189B(2) of the 1996 Act. That duty comes to an end after 56 days (or earlier if certain specified circumstances exist and the local housing authority give notice bringing the duty to an end). Thereafter, different duties apply depending, amongst other things, on whether the authority is satisfied that the person is homeless intentionally.

16 The local housing authority are under a duty to secure that accommodation is available if they are satisfied that an eligible person is homeless, has a priority need and is not intentionally homeless. The material provisions are contained in section 193 of the 1996 Act which provide that:

> **193.— Duty to persons with priority need who are not homeless intentionally.**
>
> (1) This section applies where—
>
> (a) the local housing authority—
> (i) are satisfied that an applicant is homeless and eligible for assistance, and
> (ii) are not satisfied that the applicant became homeless intentionally,
>
> (b) the authority are also satisfied that the applicant has a priority need, and
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> (c) the authority's duty to the applicant under section 189B(2) has come to an end.
>
> (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant."

17 Section 191 of the 1996 Act defines when a person become homeless intentionally. That provides, so far as material, that:

> "(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
>
> (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate."

18 The authority owes a more limited duty to those who became intentionally homeless. In such cases section 190 of the 1996 Act provides so far as material that:

> "(2) The authority must—
>
> (a) secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
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> (b) provide him with (or secure that he is provided with) advice and assistance in any attempts he may make to secure that accommodation becomes available for his occupation."

The Relevant Case Law

19 The issue in the present case concerns the relationship between events giving rise to two separate incidents, or occasions, of homelessness. In particular, the question is: in what circumstances will a period of accommodation break the causal connection between the earlier intentional homelessness and the current homelessness?

20 First, the case law recognises that the question is whether, in relation to the current state of homelessness, the applicant became homeless intentionally. There are, however, circumstances where but for the applicant's earlier deliberate act giving rise to the earlier period of homelessness, the applicant would not have become homeless on the current occasion. That appears from the following passages of the judgment of Lord Reed, with whom Baroness Hale and Lord Clarke agreed and with whose reasons Lord Neuberger agreed, in *Haile v Waltham Forest LBC* [2015] A.C. 1471:

> "22. As I have explained, the effect of the requirement in section 193(1), and its statutory predecessors, that the authority must not be satisfied that the applicant became homeless intentionally has caused difficulties of interpretation, linked to difficulties in construing the meaning of "homelessness". The purpose of the requirement is however not difficult to discern. As was explained by Lord Lowry in *Din [1983] 1 AC 657* , 679, and as counsel for the appellant emphasised in the present case, it is designed to prevent "queue jumping" by persons who, by intentionally rendering themselves homeless, would (in the absence of such a provision) obtain a priority in the provision of housing to which they would not otherwise be entitled.
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> "23. Consistently with that rationale, it cannot be intended that an applicant is to be disqualified for accommodation if he has ever, at any time in his life, become intentionally homeless. For example, an elderly man who becomes homeless when his care home is closed cannot be intended to be denied assistance merely because, 60 years earlier, he was evicted from his student digs for holding rowdy parties. As counsel for the appellant submitted, the homelessness with which the words "became homeless intentionally" are concerned must be the homelessness which the authority have found to exist: "is homeless" and "became homeless" must refer to the same current state of being homeless. It is therefore in relation to the current state of being homeless that the question has to be answered, did the applicant become homeless intentionally?
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> "24. On the other hand, section 193(1) cannot be concerned only with the reason for the loss of accommodation which the applicant occupied immediately before he became

> homeless. If that were its effect, the legal consequences of becoming homeless intentionally could readily be avoided by obtaining temporary accommodation, so that the applicant ceased for a time to be homeless, and then waiting to be evicted from it, so bringing about a state of homelessness consequent on the involuntary loss of that accommodation. The aim of the provisions relating to intentional homelessness would then be circumvented.
>
> "25. Section 193(1) must therefore be understood as being concerned with the question whether the applicant's current homelessness has been caused by intentional conduct on his part, in consequence of which he ceased to occupy accommodation which was available for his occupation and which it would have been reasonable for him to continue to occupy: either the accommodation which he was occupying immediately before he became homeless, or previous accommodation. Whether the applicant "became homeless intentionally" thus depends in the first place on the application of the definition of "becoming homeless intentionally" in section 191(1) : in short, on whether he deliberately did or failed to do anything in consequence of which he ceased to occupy accommodation meeting the requirements of that provision. If that question is answered in the affirmative, the further question then arises under section 193(1) whether the applicant's current homelessness was caused by that intentional conduct."
>
> and
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> "63 …. the decision whether an applicant is intentionally homeless depends on the cause of the homelessness existing at the date of the decision. That has to be determined having regard to all relevant circumstances and bearing in mind the purposes of the legislation. As I have indicated, a later event constituting an involuntary cause of homelessness can be regarded as superseding the applicant's earlier deliberate conduct, where in view of the later event it cannot reasonably be said that, but for the applicant's deliberate conduct, he or she would not have become homeless. Where, however, the deliberate conduct remains a "but for" cause of the homelessness, and the question is whether the chain of causation should nevertheless be regarded as having been interrupted by some other event, the question will be whether the proximate cause of the homelessness is an event which is unconnected to the applicant's own earlier conduct, and in the absence of which homelessness would probably not have occurred."

21 Secondly, one of the ways in which the causal connection can be broken is if the applicant has obtained settled, in the sense of non-temporary accommodation, following the earlier homelessness. What amounts to such settled or non-temporary accommodation is a question of fact and degree having regard to all the circumstances of the individual case bearing in mind the purpose of the legislation.

22 That was recognised by Ackner L.J., as he then was, in the Court of Appeal in *Din v Wandsworth London Borough Council,* unreported, where he said:

> "To remove his self-imposed disqualification he must therefore have achieved what can loosely be described as a "settled residence" as opposed to what from the outset is known (as in *Dyson's* case [1980] 1 W.L.R. 1205) to be only temporary accommodation. What amounts to 'a settled residence' is a matter of fact and degree depending upon the circumstances in each case."

23 That approach was cited with approval by Lord Hoffmann, with whom the other Law Lords agreed, in *R v Brent London Borough Council ex p. Awua* [1995] 1 A.C. 55 at 69b-d and by the Court of Appeal in *Knight v Vale Royal Borough Council* [2004] H.L.R. 9 at para. 20.

24 Thirdly, the factors that may be relevant include the basis on which the accommodation is occupied (whether it is occupied under a lease or a licence), the expectations of the parties as to the period of occupation, whether the arrangement is a commercial one or one between family members or friends, its affordability, whether the accommodation is overcrowded, the context in which the person concerned took the accommodation (in particular whether it was done with a view to a subsequent application for accommodation) and any other relevant factor.

25 The case law gives a number of examples of how local authorities, and courts reviewing decisions, have considered these factors. By way of example only, the grant of an assured shorthold tenancy of six months or more, which is currently the prevailing tenure in the private sector, is likely to be settled rather than temporary, accommodation. Other factors, however, such as the expectations of the parties as the outset, may indicate that it was temporary, not settled, accommodation, such as where the parties expressly agreed at the outset that the tenancy would not be renewed as the landlord would wish to sell the property at that time. See *Knight v Vale Royal Borough Council* [2003] H.L.R. 9 at paragraphs 12 and 24-26. A local authority was also entitled to reach the conclusion that a six month shorthold tenancy was not settled accommodation, in circumstances where the accommodation was overcrowded, was not affordable and the context in which the applicant entered the tenancy was to enable her to re-apply for accommodation from the local authority. On that combination of factors, the local authority was entitled to conclude that the accommodation was not settled: see *Mohammed v Westminster City Council* [2005] H.L.R. 47, per Wilson J, as he then was at paragraph 20, Rix LJ at paragraphs 22 to 23, and Tuckey LJ at paragraph 29 who agreed with the reasons given in both judgments.

26 Fourthly, in assessing whether accommodation is settled it is necessary to have regard to all relevant circumstances "bearing in mind the purposes of the legislation". The legislative purpose is to prevent persons who, having become intentionally homeless, would by obtaining temporary accommodation obtain priority in the provision of housing to which they are not entitled (see per Lord Reed in *Haile v Waltham Forest London Borough Council* [2015] A.C. 1471 at paragraphs 61 and 22). As Simon Brown J, as he then was, expressed it in *R v London Borough of Merton ex p. Ruffle* (1998) 21 H.L.R. 361 at page 366:

> "Given the grave difficulty of securing settled accommodation, and given too that the clear legislative objective underlying the concept of intentionality—to discourage people from needlessly leaving their accommodation and becoming homeless—is surely sufficiently achieved without too protracted a period of consequential disqualification from re-housing, it is much to be hoped that housing authorities will in general interpret benevolently the character of accommodation secured by applicants after a finding of intentionality, namely as to whether or not it is settled."

27 Fifthly, the task of this court is to determine whether the review officer erred in law, or reached a decision that was flawed on public law grounds, rather than considering whether the judge below had erred (see *Danesh v Kensington & Chelsea Royal London Borough Council* [2007] 1 W.L.R. 69 at paragraph 30). In that regard, the observations of Lord Neuberger in *Holmes-Moorhouse v Richmond-upon-Thames London Borough Council* [2009] 1 W.L.R. 413 ought to be borne in mind. As Lord Neuberger observed at paragraph 48 of his judgment, a court ought not to adopt an

"unfair or unrealistic approach" when considering review decisions and should not subject them to the same sort of analysis as would be appropriate when interpreting a contract, a statute or a judgment. He observed that:

> "50. Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions.
>
> "51. Further, as the present case shows, a decision can often survive despite the existence of an error in the reasoning advanced to support it. For example, sometimes the error is irrelevant to the outcome; sometimes it is too trivial (objectively, or in the eyes of the decision-maker) to affect the outcome; sometimes it is obvious from the rest of the reasoning, read as a whole, that the decision would have been the same notwithstanding the error; sometimes, there is more than one reason for the conclusion, and the error only undermines one of the reasons; sometimes, the decision is the only one which could rationally have been reached. In all such cases, the error should not (save, perhaps, in wholly exceptional circumstances) justify the decision being quashed."

The decision in Doka.

28 Finally, for completeness, it is necessary to consider the decision of this Court in *Doka v Southwark London Borough Council* [2017] H.L.R. 786 to which both parties referred. The Court held that Mr Doka did not have settled accommodation in circumstances where he was allowed to stay for two years, for payment, at his former employer's house whilst that person's son was away at university on the basis that Mr Doka gave up the room when the son came home and would vacate the property when the son completed his studies. The occupation was pursuant to "an intermittent licence under which the prospect of continuation was always uncertain" (per Patten LJ at paragraph 20). Given the facts of that case, the decision reflects the established case law and there is nothing to suggest that the decision itself is wrong.

29 Both parties drew attention to the terms upon which the Supreme Court refused permission to appeal. The Supreme Court considered that the applicable principles were authoritatively established in the cases of *Din v Wandsworth London Borough Council* and *Haile v Waltham Forest London Borough Council* and this was not a case where they needed to be reviewed "even though there may be errors in the reasoning in the Court of Appeal, which should not be treated as authoritative".

30 This is not a case where it is necessary to consider the status of a decision of the Court of Appeal in circumstances where permission to appeal is refused in those terms for this reason. In *Doka*, Patten LJ, with whom Lord Briggs agreed, said that:

> "What the applicant needs to establish is a period of occupation under either a licence or a tenancy which has at its outset or during its term a real prospect of continuation for a significant or indefinite period of time so that the applicant's transition from his earlier accommodation cannot be said to have put him into a more precarious position than he previously enjoyed".

31 In my judgment, the ratio of the decision is contained in the first part of that sentence, that is, that the person must establish a period of occupation which is likely to

continue for a significant or indefinite period. That approach is consistent with the existing case law of the Supreme Court and of this Court. The ultimate question is whether the causal link between the earlier and the later periods of homelessness has been broken. One situation where that may occur is where there has been a period of settled, or non-temporary accommodation after the earlier homelessness. Whether that is the case is a question of fact and degree to be determined having regard to all the facts of the case and bearing in mind the legislative purpose. The reference in the second part of the sentence to whether the applicant's position was more precarious than it was previously is a description of the consequences on the facts of that case of applying the established approach. I do not read the judgment as requiring the court to carry out some kind of comparison of the precariousness of the earlier and the later accommodation in order to determine if the causal connection between the two has been broken. That does not form part of the ratio of the decision. Both parties submit, and I agree, that the observations of the Supreme Court were directed at that part of the judgment. In the circumstances, as that element of the reasoning does not form part of the ratio, it is not binding. It is not necessary to consider what the status of the observations would be if they were part of the ratio of the decision.

THE APPEAL IN THE PRESENT CASE

The Ground of Appeal

32 There is one ground of appeal, namely that the respondent's reviewing officer erred by considering that the appellant had not obtained settled accommodation for the purposes of section 191 of the 1996 Act on the basis that the accommodation was overcrowded.

The Submissions

33 Ms Davies, who appeared with Mr Bano, for the appellant, submitted that the review officer did not adopt the correct approach of deciding whether as a matter of fact and degree, having regard to all relevant circumstances, the accommodation at Bravington Road was settled accommodation. Rather, the reviewing officer looked at one factor only, namely the overcrowding, and decided that the accommodation was not settled because the overcrowding made it unsuitable for occupation. Ms Davies submitted that the review officer did not have regard to a number of other factors such as the tenancy, the length of occupation, the fact that a deposit had been paid, that the accommodation was affordable and that it was a commercial relationship not a case of staying temporarily with friends or family. Further, while overcrowding was a relevant factor if it indicated the accommodation was only temporary, it would not necessarily indicate that. Here the review officer accepted that the landlord and the appellant knew and agreed at the outset that the accommodation would be overcrowded. That fact did not prevent them entering a tenancy agreement for a year with the tenancy continuing as a periodic tenancy thereafter. In any event, the landlord clearly knew about, and acquiesced, in the flat being used for the appellant and the three daughters from February 2017 and did not take steps to issue for a further year. In either of those scenarios, the fact that the accommodation was overcrowded was not inconsistent with it being settled, or non-temporary, accommodation.

34 Mr Peacock, who appeared with Ms Robins, for the respondent submitted that the review officer identified the correct test in her decision. The review officer was entitled to focus on the overcrowding in the present case as that was the critical factor in deciding whether the accommodation was settled. The review officer would have been aware that the property was let on an assured shorthold tenancy and was aware and referred to the period of time for which the accommodation was in fact occupied by the appellant. The review officer was entitled, nonetheless, to regard the overcrowding as the critical factor here. The flat was a studio flat, or one room, in which four people (two adults and two teenagers) were living. It was inevitable, given the overcrowding, that the appellant would have been evicted and the arrangement was doomed from the start. Consequently, Mr Peacock submitted, the review officer was entitled to conclude the accommodation was temporary, not settled, and did not break the causal connection with the earlier intentional homelessness.

Discussion

35 First, on a fair reading of the decision letter, it is clear that the critical factor so far as the review officer was concerned was that the studio flat was overcrowded. The review officer considered that the accommodation was unsuitable for occupation because it was overcrowded and it was for that reason that she considered the accommodation was not settled. That appears from paragraphs 12 and 13 of the decision letter set out above.

36 The review officer has not considered all the relevant facts to determine whether, as a matter of fact and degree, and bearing in mind the purpose of the legislation, the accommodation at Bravington Road was in fact a settled arrangement not a temporary one. The review officer does not refer to the nature or length of the tenancy of 9 Bravington Road or the circumstances in which the tenancy was granted. There is no reference to the fact that it was a commercial relationship or that a tenancy agreement of just under a year was entered into after it was made clear to the appellant that she would not be eligible for assistance from the authority (and not as a means of enabling her to apply for assistance from the local authority). The review officer does not refer to the fact that the rent was affordable and paid from housing benefit and discretionary assistance.

37 Secondly, it is not enough simply to identify a potentially relevant factor. It is necessary to identify how that factor is relevant to the question of whether the accommodation is settled or temporary. In the present case, there is no real analysis either of the relevance of the overcrowding on the facts of this case or its relationship with the other factors. On the facts as accepted by the review officer, the landlord, the previous local authority (Hammersmith and Fulham), and the tenant all knew at the outset that the flat would be occupied by four people when the appellant moved in: see paragraph 13 of the decision letter. Hammersmith and Fulham provided a deposit. The rent was paid for out of housing benefit and discretionary payments made by the local authority. I do not accept that in those circumstances, the arrangement was doomed to fail or that the landlord would inevitably have sought to recover possession. It may well be that the accommodation, unsuitable though it was, was the best that the appellant could find for herself and her family, given their limited financial resources and the shortage of accommodation in London. The overcrowding in the flat would not necessarily mean that the accommodation would be temporary.

38 Thirdly, the review officer does not relate the overcrowding to the other factors to assess whether those other factors mean that, taken overall, the accommodation could properly be seen as temporary or not settled. In paragraph 14, the review officer acknowledges that the appellant spent two years in the property but did not consider that that made the accommodation any more settled. No explanation for that view is given. The review officer says that she cannot have regard to the length of occupation alone but must look at all the facts of her case. That is correct – but she does not, however, refer to any other facts (other than the overcrowding previously referred to). The review officer states that she is aware that it is possible to occupy insecure, unreasonable or temporary accommodation for an extended period of time. That may be correct but does not provide an analysis, or explanation, of why the accommodation in this case was temporary rather than settled. Nor does the review officer consider all the relevant facts, including the tenancy, the length of occupation, the commercial nature of the relationship, and the basis upon which the property was let (i.e. that it was known that all four family members would be living there or, at the very least, that was known from February 2017).

CONCLUSION

39 In the circumstances, the decision of the reviewing officer is legally flawed. The decision-maker did not consider all the relevant circumstances, bearing in mind the legislative purpose, in order to determine whether, as a matter of fact and degree, the accommodation was settled. I would therefore quash the decision and remit the matter to the respondent to consider all the relevant facts.

Lady Justice King

40. I agree.

Lord Justice Bean

41. I also agree.

IN THE COURT OF APPEAL
(CIVL DIVISION)
BEFORE BEAN, KING & LEWIS LJJ

Appeal No: B5/2020/0028

ON APPEAL FROM THE COUNTY COURT SITTING AT THE MAYOR'S & CITY OF LONDON COURT
(HHJ FREELAND QC)

Claim No. F40CL213

BETWEEN:

MS KALTUN BULLALE

Appellant

- and -

CITY OF WESTMINSTER COUNCIL

Respondent

ORDER

UPON hearing Ms L. Davies and Mr N. Bano for the Appellant, and Mr I. Peacock and Ms A. Robins for the Respondent, at a remote hearing on 12th November 2020

AND UPON the Court handing down judgment on 25th November 2020

IT IS ORDERED THAT

1. The appeal is allowed.

2. The order of HHJ Freeland QC dated 12th December 2019 is set aside.

3. The Respondent's review decision dated 23rd August 2019 is quashed.

4. The Respondent shall pay the Appellant's costs of the appeals to the County Court and the Court of Appeal, which shall be subject to detailed assessment if not agreed.

5. There shall, if necessary, be a detailed assessment of the costs that are payable to the Appellant by the Lord Chancellor pursuant to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Dated 25 November 2020.